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**Iron Workers Local 416 and Pacific Reinforcing Steel, Inc. and J.L. Davidson Company, Inc.** Cases 31–CE–00216 (formerly 21–CE–00364) and 31–CE–00217 (formerly 21–CE–00365)

September 30, 2002

**DECISION AND ORDER**

BY MEMBERS LIEBMAN, COWEN, AND BARTLETT

On March 26, 2002, Administrative Law Judge Gerald A. Wacknov issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in support of the judge's decision.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions<sup>1</sup> and to adopt the recommended Order as modified.

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below.

1. Substitute the following for paragraph 1(d).

"(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply." Dated, Washington, D.C. September 30, 2002

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Wilma B. Liebman, Member

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William B. Cowen, Member

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Michael J. Bartlett, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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<sup>1</sup> The picket line clause at issue in this case is virtually indistinguishable from that found unlawful in *Carpenters (Disney Roofing & Material Co.)*, 154 NLRB 1598, 1602–1603 (1965) ("it is settled that when such a clause is so broadly written that it extends immunity from discharge to employees refusing to cross secondary picket lines, it is to that extent rendered unlawful by Section 8(e) of the Act"), *enfd.* 382 F.2d 593 (9th Cir. 1967), *cert. denied* 389 U.S. 1037 (1968). See also *Service Employees Local 32B-32J (Pratt Towers, Inc.)*, 337 NLRB No. 44 (2001).

Anne J. White, Esq., for the General Counsel.

David A. Rosenfeld, Esq. (Van Bourg, Weinberg, Roger & Rosenfeld), of Oakland, California, for the Respondent.

Robert W. Bell Jr., Esq. and Erin Downey, Esq. (Heller Ehrman White & McAuliffe), of San Diego, California, for the Charging Parties.

**DECISION**

**STATEMENT OF THE CASE**

GERALD A. WACKNOV, Administrative Law Judge. The original charge and an amended charge in Case 31–CE–00216 (formerly Case 21–CE–00364) were filed by Pacific Reinforcing Steel, Inc. on July 19 and September 6, 2001, respectively. The original charge and an amended charge in Case 31–CE–00217 (formerly Case 21–CE–00365) was filed by J.L. Davidson Company, Inc., on July 19 and September 6, 2001, respectively. On October 26, 2001, the Regional Director for Region 31 of the Board (Board) issued a consolidated complaint and notice of hearing alleging a violation of Section 8(e) of the Act by Iron Workers Local 416 (Respondent or Union). The Respondent, in its answer to the complaint, duly filed, denies that it has violated the Act as alleged.

The parties entered into a stipulation of facts dated January 25, 2002, and on the same date filed a joint motion to transfer proceedings to the Division of Judges for findings of fact, conclusions of law, and recommended Order. The motion was granted on February 1, 2002, by Associate Chief Administrative Law Judge William L. Schmidt, together with an Order transferring the cases me and setting a date for the filing of briefs.

Thereafter, briefs have been received from Counsel for the General Counsel (General Counsel), counsel for the Respondent, and counsel for the Charging Parties.<sup>1</sup> Upon the entire record, and consideration of the briefs submitted, I make the following:

**FINDINGS OF FACT**

**I. JURISDICTION**

Pacific Reinforcing Steel, Inc. is a California corporation with an office and place of business located in Santee, California, where it is engaged in the business of reinforcing steel fabrication and erection. It annually purchases and receives goods or services valued in excess of \$50,000 directly from points outside the State of California.

J.L. Davidson Company, Inc. is a California corporation with an office and place of business located in San Diego, California, where it is engaged in the business of reinforcing steel fabrication and erection. It annually purchases and receives goods or services valued in excess of \$50,000 directly from points outside the State of California.

It is admitted and I find that Pacific Reinforcing Steel, Inc. and J.L. Davidson Company, Inc. are, and at all material times have been, employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

**II. THE LABOR ORGANIZATION INVOLVED**

It is admitted and I find that at all material times the Union is and has been a labor organization within the meaning of Section 2(5) of the Act.

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<sup>1</sup> Over the Respondent's objection, I hereby grant the Charging Parties' motion, supported by an appropriate affidavit submitted by Charging Parties' attorney, that its brief, received 1 day following the briefing date, be received and considered.

## III. ALLEGED UNFAIR LABOR PRACTICES

## A. Issues

The principal issue in this proceeding is whether the Union has violated Section 8(e) of the Act by entering into, maintaining, and giving effect to an agreement in which Pacific Reinforcing Steel, Inc. and J.L. Davidson Company, Inc. have agreed not to handle or otherwise deal in the products of, or do business with, another employer or person.

## B. Facts

On or about June 9, 1998, the California Ironworker Employers Council, Inc. and the District Council of Iron Workers of the State of California and Vicinity and Local Unions 118, 155, 229, 377, 378, 416, and 433 entered into an agreement effective July 1, 1998, through June 30, 2001 (the 1998–2001 Master Agreement).

On about June 12, 1998 Pacific Reinforcing Steel, Inc. and J.L. Davidson Company, Inc. entered into an independent agreement with the District Council of Iron Workers of the State of California and Vicinity, for and on behalf of its affiliated California Field Iron Worker Local Unions (including Respondent Local 416), in which the employers agreed to be bound by the terms of the 1998–2001 Master Agreement and to any modifications, changes, extensions, or renewals.

The 1998–2001 Master Agreement includes a provision as follows:

## Section 29. Strikes and Lockouts

A—It is agreed mutually there shall be no strikes authorized by the Union and no lockouts authorized by the Employers, or individual employer, except for the refusal of either party to submit to arbitration, in accordance with Section 28, or failure on the part of either party to carry out the award of the Joint Adjustment Board.

B—Every facility of each of the parties hereto is hereby pledged to overcome immediately any such situation; provided, however, it shall not be a violation of any provision of this Agreement for any person covered by the Agreement to refuse to cross or work behind any picket line established by an International Union affiliated with the Building and Construction Trades Department of the American Federation of Labor—Congress of Industrial Organizations or a Local Union thereof, or the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America or a Local Union thereof, which picket line has been authorized or sanctioned by the local Building and Construction Trades Council having jurisdiction over the area in which the job is located after the individual employer involved has been notified and has had an opportunity to be heard. Said notice shall be in writing and mailed to the individual employer involved at his last known address.

In about June 2001, District Council of Iron Workers of the State of California, for and on behalf of its affiliated California Field Workers Local Unions (including Respondent Local 416) entered into an agreement to extend the terms of the 1998–2001 Master Agreement, with certain changes (primarily monetary in nature) that are not relevant herein. The language in section 29 remains the same as set forth above. By this conduct the District Council of Iron Workers of the State of California, for and on behalf of its affiliated California Field Workers Local Unions

(including Respondent Local 416) re-entered into and/or affirmed section 29 of the—Master Agreement.

## C. Analysis and Conclusions

Each of the parties, in its brief, places primary reliance on *Bricklayers Local 2 (Gunnar I. Johnson & Son)*, 224 NLRB 1021 (1976). In that case the Board stated that Section 8(e) of the Act prohibits picket line clauses that are “broad enough to apply to secondary picketing having no connection with disputes concerning jobsite contracting.”<sup>2</sup> Thus, the Board found that the following clause was impermissible:

Pickets, Banners and Strikes. The Employer may not request or instruct any Employee except Watchmen or Supervisory personnel to go through a picket line except to protect life or property. The Unions agree that there shall be no cessation of work or any recognition of picket lines of any union without first giving prior notice to the Employer or his Association.

However, in that case the following picket line clause of another union was not alleged to be unlawful on its face:

Refusal to pass through a *lawfully permitted* picket line will not constitute a violation of the agreement. [Emphasis supplied.]

The Respondent maintains that the picket line clause in section 29 of the 1998–2001 Master Agreement “is no different in material respect” to the picket line clause directly above. I do not agree. The operative language, “lawfully permitted,” does not explicitly appear in section 29; nor may it be implied.

The Respondent further maintains that the finding of an 8(e) violation in the *Bricklayer’s* case is dependent upon the fact that the language found unlawful protects employees by specifically exempting them from discipline should they refuse their employer’s request or instruction to cross a picket line, and that such or similar specific language offering “affirmative protection” is essential to establish a violation. I do not agree. The holding in the *Bricklayer’s* case is simply dependent upon any broad language that may reasonably be understood to permit employees of a primary employer, individually or collectively, to honor secondary picketing having no connection with disputes concerning jobsite contracting. In the instant case, section 29 (A) contains a no-strike clause; therefore it would be a violation of the agreement for the Union to initiate or support a primary strike by one or more employees during the contract term. However, section 29(B) modifies the no-strike clause by exempting from its coverage and thereby permitting “any person covered by the Agreement to refuse to cross or work behind any picket line.” As this language, which must necessarily refer to secondary activity, allows employees of a primary employer to strike in support of secondary picket lines, it may be reasonably understood to permit conduct that is violative of Section 8(e) of the Act. I so find. See also *General Truck Drivers Local 467 (Mike Sullivan)*, 265 NLRB 1679 (1982), and cases cited therein.

The Respondent also contends that the complaint should be dismissed because, although the Respondent Union was served with the charges, the charges filed by the Charging Parties are defective as they do not name the Respondent Union as a charged party. On the specific charge forms designed for 8(e) cases, there

<sup>2</sup> The first proviso to Sec. 8(e) provides that Sec. 8(e) shall not prohibit “an agreement between a labor organization and an employer in the construction.”

is a box for "Name of Labor Organization." In this box, completely filling a very confined space, the Charging Parties inserted "District Council of Ironworkers of the State of California and vicinity," a different entity than the Respondent. Immediately below that box, in a much larger box entitled "Address," the Charging Parties inserted "Iron Workers Local #416, 13820 San Antonio Drive, Norwalk, CA 90650," the name and address of the Respondent. In other appropriate boxes the Charging Parties inserted the name of the Respondent's business agent and the Respondent's phone number. The complaint caption contains the name of the Respondent and the complaint language asserts that the charges were filed by the Charging Parties and served upon the Respondent.

It appears from the foregoing that the Charging Parties intended to include the Respondent as a charged party, and that the Regional Office issuing the complaint understood the charges to be filed against the Respondent. Moreover, it appears that the Respondent understood that it was a charged party as it filed an answer to the complaint and at no time, insofar as the stipulated record shows, maintained that it was not appropriately a charged party or that the charges were deficient. Under these circumstances I find the Respondent's contention to be without merit.

#### CONCLUSIONS OF LAW

1. The Respondent, Pacific Reinforcing Steel, Inc. and J.L. Davidson Company, Inc. are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Union has violated Section 8(e) of the Act by entering into, maintaining, and giving effect to agreements with Pacific Reinforcing Steel, Inc. and J.L. Davidson Company containing picket line clauses which permit employees to refuse to cross any picket line established by any union, and thereby have the effect of causing these employers to agree not to handle or otherwise deal in the products of, or do business with, another employer or person.

#### THE REMEDY

Having found that the Respondent has violated and is violating Section 8(e) of the Act, I recommend that it be required to cease and desist therefrom and to notify the employers in writing that it will not give force or effect to the unlawful contractual provision. Further, I also recommend that the Respondent post an appropriate notice to inform employees and members of this matter.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>3</sup>

#### ORDER

The Respondent, Iron Workers Local 416, its officers, agents, and representatives, shall

1. Cease and desist from entering into, maintaining, and giving effect to agreements with Pacific Reinforcing Steel, Inc. and J.L. Davidson Company containing picket line clauses which permit their employees to refuse to cross any picket line established by any union, and thereby have the effect of obtaining the agreement

<sup>3</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

of these Employers not to handle or otherwise deal in the products of, or do business with, another employer or person.

(a) Notify the Employers in writing that the Respondent will not apply or seek to enforce the picket line clause found unlawful herein in its dealings with the Employers.

(b) Within 14 days after service by the Region, post at its union offices and hiring halls copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Sign and return to the Regional Director of Region 31, sufficient copies of the notice for posting by the Employers, if willing, at all places where notices to employees are customarily posted.

(d) Notify the Regional Director of Region 31 within 20 days from the date of this Order what steps have been taken to comply. Dated: San Francisco, California, March 26, 2002.

#### APPENDIX

##### NOTICE TO EMPLOYEES

##### POSTED BY ORDER OF THE

##### NATIONAL LABOR RELATIONS BOARD

##### An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL cease and desist from entering into, maintaining, and giving effect to agreements with Pacific Reinforcing Steel, Inc. and J.L. Davidson Company containing picket line clauses which permit employees to refuse to cross any picket line established by any union, and thereby have the effect of obtaining the agreement of these Employers not to handle or otherwise deal in the products of, or do business with, another employer or person.

WE WILL notify the Employers in writing that we will not apply or seek to enforce the picket line clause in the contract to the extent that it permits their employees to cross picket lines established by any union.

IRON WORKERS LOCAL 416

<sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."